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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/556,200	04/21/2000	James R. Bonds	3029-108	7068

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PITNEY, HARDIN, KIPP & SZUCH LLP  
685 THIRD AVENUE  
NEW YORK, NY 10017-4024

EXAMINER

GUADALUPE, YARITZA

ART UNIT	PAPER NUMBER
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2859

DATE MAILED: 02/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/556,200

Applicant(s)

BONDS ET AL.

Examiner

Yaritza Guadalupe

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13 is/are allowed.
- 6) ☒ Claim(s) 1-12, 14 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

**REOPENING OF PROSECUTION –  
NEW GROUND OF REJECTION AFTER APPEAL**

1. In view of the Appeal Brief, paper no. 13, filed on 21 November 2002, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (a) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (b) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 4, 7, 8, 9 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 4, 7, 8, 9, and 10 are improperly dependent upon claim 3, which has been cancelled. Therefore, it is not clear how claims 4, 7, 8, 9 and 10 are related or grouped with respect to claim 1 or any other pending claim, thus making it difficult to apply a rejection based on Prior Art.

For purposes of the present Office Action, a Prior Art rejection will be made based on the assumption that claims 4, 7, 8, 9 and 10 are dependent upon claim 1. As a response to the present Action, Applicant should clarify and correct this issue.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1 – 2 and 14 - 15 are rejected under 35 U.S.C. 102 ( b ) as being anticipated by Speelman et al. ( US 5,158,363 ).

Speelman et al. discloses a steam indicator, which inherently teaches that upon exposure to steam / high temperature gas, an indication will be given. With respect to claims 1 and 2, Speelman et al. discloses a layer of material ( 32, 18 ) which substantially irreversibly changes from a first appearance to a second appearance in response to exposure to a threshold temperature ( See Columns 3 and 4, lines 57 – 11 ), wherein a first portion of said layer of material is initially free from exposure to said threshold and has said first appearance, and wherein a second portion ( 16 ) of said layer of material is initially exposed to said threshold temperature and has said second appearance, whereby said first portion and said second portion form a visible pattern of uniform appearance.

6. Claims 1 – 2, and 4 – 6, 11 – 12 and 14 - 15 are rejected under 35 U.S.C. 102 ( b ) as being anticipated by Prusik et al. ( US 5,709,472 ).

Prusik et al. discloses a temperature indicator comprising a layer of material ( 17 ) which substantially irreversibly changes from a first appearance to a second appearance in response to exposure to a threshold temperature, wherein a first portion of said layer of material is initially free from exposure to said threshold and has said first appearance, and wherein a second portion ( 18 ) of said layer of material is initially exposed to said threshold temperature and has said second appearance ( See Columns 7 and 8, lines 63 – 67 and 1 – 6 respectively ), whereby said first portion and said second portion form a visible pattern of uniform appearance. Prusik et al. discloses an indicator that is a label ( 11 ) including a support surface ( 20 ), an adhesive layer

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(19, 24 ), and where the visible pattern includes a selected color / dye. Prusik et al. discloses an indicator which is considered to be exposed to said threshold temperature by an indirect thermal contact and direct thermal contact since it mentions that can be used on critical temperature storages ( See Column 5, line 41 ) and contained in food packages ( See Column 5, lines 29 - 30).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 7 – 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prusik et al. ( US 5,709,472 ) in view of Haas et al. ( US 5,719,828 ).

Prusik et al. discloses a temperature indicator as stated in paragraph 5 above.

Prusik et al. does not discloses the visible pattern including a text as stated in claim 7, or a cross – hatching as stated in claim 8, or parallel dashes as stated in claim 9, or dots as stated in claim 10.

Prusik et al. discloses an indicator having a color indication but makes no mention of a particular pattern used. Haas et al. discloses a patterned indicator reacting to a threshold parameter and displaying a visual indicator which can be selected from text, dots, bar codes, numerals, etc. ( See Figures 1 – 38 ). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a visible pattern selected from the group disclosed by Haas et al. in the indicator disclosed by Prusik et al. in order to enhance the visibility in the absence of light or longer distances and provide an indicator related to a particular product or season.

*Allowable Subject Matter*

9. Claim 13 is allowed.

*Response to Arguments*

10. Applicant's arguments with respect to claims 1 – 15 have been considered but are moot in view of the new ground(s) of rejection.

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*Conclusion*

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yaritza Guadalupe whose telephone number is (703)305 -5676.

The examiner can normally be reached on 9:00 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (703) 308-3875. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9318 for regular communications and (703)872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0956.



Yaritza Guadalupe  
Patent Examiner  
Art Unit 2859  
February 3, 2003

DIEGO F.F. GUTIERREZ  
SUPERVISOR PATENT EXAMINER  
TECHNOLOGY CENTER 2800